

# KAZAKHSTAN

## TRADE SUMMARY

In 1999, the U.S. trade deficit with Kazakhstan was \$49 million, a decrease of \$17 million from the U.S. trade deficit of \$66 million in 1998. U.S. merchandise exports to Kazakhstan were \$179 million in 1999, an increase of \$76 million (73.5 percent) from the level of U.S. exports to Kazakhstan in 1998. Kazakhstan was the United States' 94<sup>th</sup> largest export market in 1999. U.S. imports from Kazakhstan were \$228 million in 1999, an increase of \$59 million (35.3 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 1998 was \$2.3 billion, an increase of approximately 61.6 percent from the level of U.S. FDI in 1997. U.S. FDI constitutes about 40 percent of the total FDI in Kazakhstan.

## OVERVIEW

Kazakhstan is in the midst of its transition to a market economy. Key reforms underway include completing Kazakhstan's privatization program, creating a viable securities market, implementing pension reform, modifying its trade regime so that Kazakhstan can join the World Trade Organization (WTO), consolidating the banking sector and improving Kazakhstan's investment climate.

Over 100 American firms have established offices in Almaty, Kazakhstan's former capital and largest city. Major U.S. investors include Chevron, ExxonMobil, Philip Morris, Oryx, and AES. The move of the capital to Astana continues to generate personnel changes in government, and a very cumbersome bureaucracy has increased obstacles to doing business in Kazakhstan.

The U.S.-Kazakhstan bilateral trade agreement, which came into force in 1993, grants reciprocal most-favored-nation treatment (now known as "Normal Trade Relations"). A bilateral investment treaty came into force in January

1994. In addition, an avoidance of double taxation treaty came into force in December 1996. U.S. firms have noted that Kazakhstan's implementation of the double taxation treaty has been spotty due to the government's lack of technical expertise to implement the terms of the agreement.

## IMPORT POLICIES

### Customs Duties and Taxes

The average weighted import tariff in Kazakhstan is approximately 10 percent. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free, pursuant to a customs union agreement. In January 1999, in reaction to the August devaluation of the Russian ruble and the consequent influx of inexpensive food products, the government of Kazakhstan temporarily banned the import of a wide range of Russian food products. This ban has now been lifted.

Merchandise from non-CIS countries is subject to a value-added tax (VAT) of 20 percent at the time of importation (VAT destination principle). Goods exported from CIS countries to Kazakhstan are generally also taxed at the time of importation. Goods imported from Russia and Tajikistan, however, are still subject to the VAT at the time of exportation (origin principle). The Russian departure from the world-standardized practice of destination principle continues to cause double taxation problems. In addition, Kazakhstan's customs service levies a 0.2 percent import processing fee, based on the declared value of the item. In July 1998, Kazakhstan made all pharmaceutical imports exempt from the VAT.

Enterprises importing materials used in industrial processing (gas, water, raw materials and materials for industrial processing) are granted a three-month delay in paying VAT taxes.

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Article 22 of the 1994 Foreign Investment Law exempts from customs duties property imported by a foreign investor for the purpose of contributing it to the charter fund of a “foreign-shared enterprise” (defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). Following the July 1997 changes to the Foreign Investment Law, only equipment and spare parts for this equipment imported for the charter fund are exempt from customs duties.

According to the February 1997 “Law on State Support for Direct Investment,” imported goods (equipment, raw and other materials) can qualify for complete or partial exemption of duty by agreement with the state investment committee, if the goods are used as an investment in designated “priority sectors” of the economy. However, there is no absolute right to duty exemptions. Priority sectors include infrastructure, agriculture, tourism, and all imported goods related to activity connected with the construction of the new Kazakhstani capital at Astana. In addition, there is a 1997 government resolution giving duty-free status to materials to be used in the construction of the road from Almaty to Astana.

Certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year, duty-free. With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials. U.S. firms report that, in some cases, violations of these provisions by importers have led to confiscation of assets.

Kazakhstan formed a customs union with Russia and Belarus in January 1995. The Kyrgyz Republic formally joined in 1997, and Tajikistan joined in 1998. Under the provisions of the customs union, trade between these five countries is free of customs duties, but as of yet they have not established a common customs tariff. The Kyrgyz Republic was the first of the five customs union members to complete its accession to the WTO. Russia, Belarus and Kazakhstan are still negotiating the terms of their WTO membership, and Tajikistan has not yet applied. As they move towards WTO membership, the customs union members will harmonize their trade policies within WTO rules, which should support their economic integration efforts. Some CIS commentators have claimed that the Kyrgyz Republic’s WTO accession has complicated the future of the customs union. Membership in the WTO, however, is not incompatible with participation in regional trade agreements, as long as substantially all the trade is covered and other WTO requirements are met. The customs union is, at the same time, developing coordinated customs procedures. This will reduce the cost of the transshipment through the customs union member states of U.S. goods destined for Kazakhstan.

### Customs Procedures

In 1999, substantial revisions were made to the Kazakhstan Customs Code. Many of these new provisions were made to meet WTO compliance. Additional new provisions also will bring Kazakhstan’s customs regime closer to conformity with the international standard for customs procedures, as defined in the Kyoto Convention. While the new legislation is in effect, implementing regulations are still in the process of being prepared by customs, thus delaying the positive effect of the new codification.

Kazakhstan’s customs valuation rules largely conform to the WTO Customs Valuation

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Agreement. Despite this codification of WTO-compliant valuation rules, however, a Ministry of State Revenues Order (Order 402 of September 28, 1999) sets conditional prices for certain imported goods. Order 402 is contradictory to the WTO valuation methodology and is also in apparent conflict with the valuation principles of the Kazakhstan Customs Code.

The Kazakhstan tariff nomenclature is patterned after the World Customs Organization's (WCO) harmonized system.

In 1999, the government of Kazakhstan repudiated an exclusive contract to a private vendor for the processing and filing of electronic declarations. This has substantially reduced the cost of filing the customs declaration, which had previously been identified as an added cost of doing business in Kazakhstan. The repudiation of this contract has, however, substantially retarded the development of the automation of customs.

Order 532P, issued at the end of 1999, liberalized certain requirements relating to the storage of goods prior to customs clearance. This order should reduce the burden of a requirement that imported goods be placed in a temporary storage warehouse pending customs clearance.

Poor implementation of regulations relating to pre-arrival and periodic declarations has been an additional cost to businesses. This is due primarily to vague regulations and a lack of understanding of these procedures, both by the customs officers and by the importing community.

U.S. companies have also complained of a requirement that they obtain a "transaction passport" to clear imported goods through customs. This regulation is designed to stem the outflow of capital and money laundering. The state customs department and the national bank

of Kazakhstan are requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing on import/export transactions. While this procedure is onerous by U.S. standards, in a cash economy it does provide a control mechanism.

### STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of old Soviet standards, testing, labeling, and certification requirements is uneven. In November 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the government of Kazakhstan to bring Kazakhstan's metrology methods into conformity with international rules and practices.

The Law on Standardization and the Law on Certification were signed into law by the president on July 16, 1999, with a view to bringing these areas into compliance with international standards and practices. However, paragraph 2 of Article 12 of the Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producers, the date of production, the expiration date, storage requirements, the mode of use in both the Kazakh (state) and Russian languages. Pursuant to the Constitution of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Languages," however, the Russian language is the language of international communication and it may be used equally with the state language in Kazakhstan. At present, when products are imported into the Republic of Kazakhstan, they are usually accompanied by appropriate documents in the Russian language. Thus, it could be argued that the requirement for Kazakh language information imposes an additional cost and may constitute a trade barrier. The government of Kazakhstan, however, reportedly will accept

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placement of Kazakh language stickers on products as compliance with the law. The government is also reportedly prepared to issue a regulation exempting pharmaceutical products from the Kazakh labeling requirement.

### GOVERNMENT PROCUREMENT

The Republic of Kazakhstan, with the support of the World Bank, is reforming and harmonizing its system of state procurement. The state procurement agency of the Republic of Kazakhstan was established by presidential decree on December 14, 1998 and the Regulation on State Procurement Agency was approved on March 26, 1999. Under this legal structure, the monitoring functions of the State Procurement Agency were strengthened, control systems were improved and independence in selection of methods of procurement with larger value has been provided. A state procurement bulletin is now published regularly. It contains analytical material and legal acts and regulations, which are expected to improve the transparency and openness of the process of state procurement. The current law, however, still contains provisions whereby domestic producers and small businesses receive preferential treatment during the government procurement process.

U.S.-funded assistance projects are helping Kazakhstan establish a database to assist procurement, according to a USAID contractor and government procurement expert. A regional seminar will be conducted in late March to train procurement officials from all five Central Asian countries in the use of the existing database. If the project is completed and the database becomes fully operational, it could help U.S. exporters communicate their product lists to the Government of Kazakhstan and result in more efficient procurement practices. American businesses continue to report problems, however, in obtaining adequate notice of tender offers. U.S. business representatives still complain that tender offers are not always

publicized and that there is no standardized format for publicized tender offers; they appear in different publications, have varying requirements for the submission of bids, and sometimes do not provide adequate time limits to allow U.S. businesses to prepare and submit bids. Moreover, energy companies must comply with local content requirements that were enacted in September of 1999 but have not yet been fully implemented. The wholly state-owned oil enterprise is bound by this local content requirement. Kazakhstan is not yet a signatory of the WTO Agreement on Government Procurement.

### INTELLECTUAL PROPERTY RIGHTS PROTECTION

The 1992 bilateral trade agreement between the United States and Kazakhstan incorporates provisions on the protection of intellectual property rights (IPR). Kazakhstan is also in the process of acceding to the WTO. As a result, all of its intellectual property legislation is focused on being compliant with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Under the bilateral trade agreement, Kazakhstan agreed to bring its IPR regime up to world standards. Kazakhstan has fulfilled certain of its obligations under the trade agreement, but still has several steps to take.

Kazakhstan is a member of the Berne Convention for the Protection of Literary and Artistic Works, but has not yet made the necessary changes to its copyright law to implement Berne. (Most notably, the copyright law has not been amended to reflect the Berne Article 18 obligation to provide retroactive protection to foreign works still within their term of protection in their country of origin.) The TRIPS Agreement requires that such retroactive protection also apply to sound recordings.

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Kazakhstan has yet to join the Geneva Phonograms Convention, although, as of January 2000, legislation ratifying this convention was pending before parliament. Two other intellectual property bills have yet to be passed by parliament: the Law on Commercial Secrets and the Law on Integrated Circuits. Kazakhstan has signed but has not ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Kazakhstan enacted several new intellectual property rights laws in 1999. On July 16, 1999, Kazakhstan enacted a new law governing patents; on July 26, 1999 a new trademark law was enacted; and the Law Governing Selective Achievements was enacted on July 13, 1999. The current law on copyright dates from June 10, 1996. The copyright law protects software as literary works and databases as compilations.

In July 1999, Kazakhstan amended its Customs Code to provide for the seizure at the border of objects that violate intellectual property rights. Customs rules and regulations are currently being developed to implement these articles of the Customs Code.

Lax enforcement remains a major problem; however, the lack of automation in customs processing impedes efficient operations. Gaps in knowledge and training on the part of those responsible for enforcing intellectual property rights pose another obstacle to enforcement. Public understanding of the principles of authors' rights is low, as is public support for enforcement of intellectual property rights.

Kazakhstan has not yet selected private organization(s) which will be responsible for the collective management of authors' rights. Several groups are vying for the right to license rights and collect royalties on behalf of authors.

### INVESTMENT BARRIERS

There is a severe lack of capital in domestic enterprises for servicing loans and to meet equity percentages in joint ventures. In addition, in accordance with the Law on Land, the following types of land plots cannot be held through private ownership: agricultural lands, defense industry lands, specially protected territories, lands of forest and water funds, lands of general use, and uninhabited areas. Foreign firms can obtain leasing rights to land only through a domestic partner and only for a maximum of 99 years. Kazakhstani authorities have often insisted that U.S. firms invest in social programs for local communities.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. The total registered capital of banks with foreign participation cannot be more than 25 percent of the total registered capital of all banks in Kazakhstan.

### OTHER BARRIERS

There are other structural barriers in Kazakhstan including a weak system of business law, a shortage of domestic capital to pay for U.S. goods, the lack of an effective judicial process for breach-of-contract resolution, logistical difficulties of serving the Kazakhstani market, and an unwieldy and corrupt government bureaucracy. In addition, there are specific hindrances to U.S. companies that have established business activities in Kazakhstan, including a burdensome tax monitoring system, licensing requirements for numerous simple business activities, and a cumbersome and restrictive work permit system that hinders companies' ability to hire expatriates.